

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 ALBERTO GUTIERREZ,) Case No. CV 10-04428 DDP (CWx)
12 Plaintiff,)
13 v.) ORDER GRANTING IN PART AND
14 PHILLIP SOLANO, COUNTY OF) DENYING IN PART DEFENDANTS'
LOS ANGELES, et al.) MOTION FOR SUMMARY JUDGMENT
15)
16 Defendants.)

)

18 Presently before the court is Defendants Phillip Solano,
19 County of Los Angeles, and Russell Verduzco's (collectively,
20 "Defendants") Motion for Summary Judgment ("Motion"). Having
21 reviewed the parties' moving papers and heard oral argument, the
22 court grants the Motion in part, denies the Motion in part, and
23 adopts the following Order.

24 | I. BACKGROUND

On May 28, 2008, Plaintiff Alberto Gutierrez ("Plaintiff") was arrested for allegedly threatening his wife, Defendant Mayela Gutierrez Gil ("Gil"). Shortly after, on June 2, 2008, Gil took out a restraining order against Plaintiff ("Restraining Order").

1 On June 13, 2008, two deputies for the Los Angeles County
2 Sheriff's Department ("Sheriff's Department") responded to a call
3 from Gil, regarding an alleged violation of the Restraining Order.
4 The deputies prepared an incident report. Defendant Phillip
5 Solano, a Detective for the Sheriff's Department, then investigated
6 the matter. On June 19, 2008, Detective Solano interviewed
7 Plaintiff. On June 24, 2008, Detective Solano interviewed Gil, who
8 stated that Plaintiff had tried to call her or had driven by her
9 work or home on ten occasions between May 31 and June 23, 2008.
10 (Pls.' Resp. to Defs.' Separate Statement of Undisputed Facts
11 ("SS")) ¶¶ 1-8.)

According to Defendants, Detective Solano investigated another alleged violation of the Restraining Order on September 6, 2008. Detective Solano and a fellow detective allegedly interviewed Gil, her sister, and another witness, who stated that they had seen Plaintiff near Gil's residence. Detective Solano allegedly interviewed Plaintiff as well, on September 9, 2008. According to the Detective, Plaintiff denied having been near Gil's residence and stated that he had been far from the area with friends. Plaintiff, however, allegedly refused to provide Detective Solano with names and phone numbers to verify his story. Detective Solano and two other detectives therefore took Plaintiff into custody on September 11, 2008. Plaintiff posted bail on September 12, 2008, and the case was submitted to the District Attorney's Office for filing consideration.¹ (Id. ¶¶ 9-14, 17.)

¹ In their Motion, Defendants state that the District Attorney's Office filed three charges against Plaintiff in late 2008, including one count of making criminal threats and two counts of violating a domestic relations court order. (Mot. at 5.) This (continued...)

On March 21, 2009, Defendant Russell Verduzco, a Sheriff's Department Deputy, responded to a report from Plaintiff that Gil had threatened him at a local gas station. According to Plaintiff, Deputy Verduzco called him after investigating the incident and told him that the Deputy had sufficient evidence from gas station surveillance tapes to arrest Gil. Deputy Verduzco, however, allegedly called Plaintiff again sometime later, telling Plaintiff that he had spoken with Detective Solano, and that Plaintiff "had better drop the complaint against" Gil or Deputy Verduzco "was going to make it his personal mission to make sure that 'it really got ugly' for Plaintiff." Defendants claim, to the contrary, that Deputy Verduzco simply investigated the incident, concluded from the gas station video that Plaintiff and Gil had no contact with each other, and therefore informed Plaintiff that he would not file a crime report. (*Id.* ¶¶ 22-24.) Plaintiff also alleges that he contacted Detective Solano repeatedly during the investigations, but that the Detective would not return his phone calls, and once walked away when Plaintiff tried to talk to him in person at the Sheriff's station, stating that he could not help Plaintiff. (Pls.' Ex. 3 in Supp. of Opp'n to Mot. ("Pls.' Ex. 3") at 117-18.)

Plaintiff went to trial on the aforementioned criminal charges in April 2010. (SS ¶ 18.) During testimony, it was apparently disclosed for the first time that Detective Solano and Gil had communicated via Facebook, an online social networking site. Specifically, Gil testified that she had accepted a "friendship request" from Detective Solano, and that Detective Solano had sent

27 ¹(...continued)
28 alleged fact, however, is not set forth in any other document
before this court.

1 her a message that he "missed" her. Gil also testified that she
2 and Detective Solano had "talked and conversed" about things other
3 than the case. Further, Gil stated that she had told Detective
4 Solano, during trial and apparently in violation of the judge's
5 order not to talk to witnesses, that Plaintiff's counsel knew about
6 the "'Facebook' issue." Also during the trial, Deputy Verduzco
7 testified that he had spoken with Detective Solano about
8 Plaintiff's report regarding Gil. (Pls.' Ex. 1 at 90-91, 12-17,
9 225.) On April 12, 2010, the jury acquitted Plaintiff. (SS ¶ 21.)

10 Plaintiff then filed this civil rights action against
11 Defendants, on June 16, 2010. (Id. ¶ 25.) During a recent
12 deposition, Detective Solano testified that the Facebook message he
13 had sent to Gil read "como estas preciosa te estrano [sic] mucho."
14 Detective Solano stated that, to him, this translates as "What's
15 up, Babe, or how are you, babe or cutie or sweetie, haven't seen
16 you or miss you." He also agreed that the literal translation -
17 "how are you precious . . . I miss you a lot" - was a fair
18 translation. Detective Solano further testified that he did not
19 recall whether he or Gil had initiated the Facebook "friendship."
20 (Pls.' Ex. 2 at 74-75, 81-82.)

21 In his Second Amended Complaint ("SAC"), Plaintiff alleges
22 that Detective Solano and Gil "were involved in a romantic/sexual
23 relationship." He further alleges that Detective Solano and Gil
24 "carried out a plan to falsely arrest and charge [Plaintiff] with
25 crimes so as to ensure that [Gil] would be given custody of their
26 children in pending divorce proceedings." Specifically, Plaintiff
27 asserts that Gil fabricated all of the alleged threats and
28 Restraining Order violations, at the urging and with the assistance

1 of Detective Solano and Deputy Verduzco. Likewise, Plaintiff
 2 alleges that the three Defendants concealed Deputy Verduzco's
 3 finding that Gil "was following and harassing Plaintiff." (SAC ¶¶
 4 11-14, 37.) Plaintiff contends that Detective Solano therefore
 5 arrested him without probable cause, and caused him: 1) "to be
 6 wrongfully imprisoned until he was able to secure bail"; 2) "to pay
 7 fees related to the bail"; and 3) "to hire criminal defense
 8 attorneys at great cost." (Id. ¶ 17.) Plaintiff also alleges that
 9 he suffered great emotional and psychological pain and suffering,
 10 due to being "wrongfully arrested, charged with criminal acts,
 11 jailed, detained, prosecuted and tried." (Id. ¶¶ 25-28.)

12 Based on these facts, Plaintiff asserts three causes of action
 13 under 42 U.S.C. § 1983 ("Section 1983"): 1) that Defendant Solano
 14 violated his Fourth and Fourteenth Amendment rights by wrongfully
 15 arresting him without probable cause (Id. ¶¶ 19-30); 2) that
 16 Defendants Solano, Gil, and Verduzco conspired to violate his
 17 Fourteenth Amendment due process rights, by causing him to be
 18 falsely arrested, charged, and made to stand trial (Id. ¶¶ 31-40);
 19 and 3) that Defendant County of Los Angeles is liable for the
 20 violations, because it has an "established custom and practice
 21 whereby [Sheriff's Department deputies] were permitted to, and
 22 regularly did, pursue and maintain intimate personal relationships
 23 with the victims in cases that they were investigating." (Id. ¶¶
 24 41-58). Plaintiff also alleges state law claims for false
 25 imprisonment and intentional infliction of emotional distress.
 26 (Id. ¶¶ 59-80.)

27 Defendants filed this Motion for Summary Judgment on November
 28 14, 2011, arguing that: 1) all of Plaintiff's claims are barred,

1 because he was arrested based on probable cause; 2) Plaintiff's
2 Section 1983 claims fail as a matter of law, because he was
3 acquitted in his criminal trial; 3) Defendants Solano and Verduzco
4 are entitled to qualified immunity; 4) Plaintiff's municipal
5 liability claim fails because the County of Los Angeles had no
6 unlawful custom or practice; and 5) Plaintiff's state law claims
7 are time-barred. (Mot. at 3-4.)

8 **II. LEGAL STANDARD**

9 Summary judgment is appropriate where "the movant shows that
10 there is no genuine dispute as to any material fact and the movant
11 is entitled to a judgment as a matter of law." Fed. R. Civ. P.
12 56(a); see also Celotex Corp. v. Catrett, 477 U.S. 317, 324
13 (1986). In deciding a motion for summary judgment, the evidence is
14 viewed in the light most favorable to the non-moving party, and all
15 justifiable inferences are drawn in its favor. Anderson v. Liberty
16 Lobby, Inc., 477 U.S. 242, 255 (1986).

17 A genuine issue exists if "the evidence is such that a
18 reasonable jury could return a verdict for the nonmoving party,"
19 and material facts are those "that might affect the outcome of the
20 suit under the governing law." Id. at 248. No genuine issue of
21 fact exists "[w]here the record taken as a whole could not lead a
22 rational trier of fact to find for the non-moving party."
23 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
24 587 (1986).

25 It is not enough for a party opposing summary judgment to
26 "rest on mere allegations or denials of his pleadings." Anderson,
27 477 U.S. at 259. Instead, the nonmoving party must go beyond the
28 pleadings to designate specific facts showing that there is a

1 genuine issue for trial. Celotex, 477 U.S. at 324. The "mere
2 existence of a scintilla of evidence" in support of the nonmoving
3 party's claim is insufficient to defeat summary judgment.

4 Anderson, 477 U.S. at 252. "Credibility determinations, the
5 weighing of the evidence, and the drawing of legitimate inferences
6 from the facts are jury functions, not those of a judge," when he
7 or she is ruling on a motion for summary judgment. Id. at 255.

8 **III. DISCUSSION**

9 **A. Municipal Liability and State Law Claims**

10 As an initial matter, Plaintiff does not dispute Defendants'
11 Motion as to municipal liability for the County of Los Angeles or
12 as to his state law claims. Nor does the court find evidence of
13 any relevant County actions or policies, or that the state law
14 claims are not time-barred. The court therefore grants summary
15 judgment for Defendants on these three causes of action.

16 **B. Probable Cause**

17 Defendants argue that Plaintiff's remaining two causes of
18 action are barred because Detective Solano arrested him based on
19 probable cause. The court disagrees, as there is a genuine issue
20 whether there was probable cause to arrest Plaintiff.

21 Probable cause exists for a warrantless arrest where "under
22 the totality of the facts and circumstances known to the arresting
23 officer, a prudent person would have concluded that there was a
24 fair probability that the suspect had committed a crime." U.S. v.
25 Struckman, 603 F.3d 731, 739 (9th Cir. 2010) (internal quotation
26 marks omitted). Here, Defendants claim that the facts and
27 circumstances known to Detective Solano and supporting probable
28 cause include: 1) Plaintiff's May 2008 arrest for threatening Gil;

1 2) Gil's subsequent Restraining Order against Plaintiff; 3) Gil's
2 June 2008 call and report regarding violations of the Restraining
3 Order; 4) Detective Solano's investigatory interview of Gil, where
4 she reported numerous additional violations by Plaintiff; 5) the
5 September 2008 alleged violation, confirmed by Gil, her sister, and
6 a witness, to Detective Solano; and 6) Plaintiff's refusal to
7 verify his alibi for the incident to Detective Solano.

8 However, viewing the evidence in the light most favorable to
9 Plaintiff and drawing all reasonable inference in his favor, a
10 reasonable jury could find that these were not the actual facts
11 known to Detective Solano. As discussed, Plaintiff has presented
12 evidence that Detective Solano sent an arguably romantic message to
13 Gil on Facebook, and that Gil then warned Detective Solano during
14 trial that Plaintiff's counsel had discovered the Facebook
15 connection. Gil also testified that she and Detective Solano had a
16 talked and conversed about other things. Based on these facts, a
17 reasonable jury could infer that Gil and Detective Solano had a
18 romantic relationship that preceded the trial. In light of this
19 relationship, a jury might also credit Plaintiff's testimony that
20 Deputy Verduzco, after initially confirming from surveillance tapes
21 that Gil had harassed Plaintiff, had at Detective Solano's
22 insistence, threatened Plaintiff and demanded he drop the matter.

23 Lastly, after finding that Detective Solano had conspired to
24 suppress this evidence in Plaintiff's favor and threaten Plaintiff,
25 because of his romantic relationship with Plaintiff's wife, a jury
26 might also reasonably conclude that Detective Solano and Gil had
27 fabricated the other evidence against Plaintiff. Indeed, the only
28 evidence presently before the court of the alleged facts supporting

1 probable cause comes from Detective Solano and Gil.² Of course, a
 2 reasonable jury might instead find this evidence credible and
 3 Plaintiff's theory too far-fetched. Defendants might also put
 4 forward additional corroborating evidence of probable cause. But
 5 as the evidence stands now, the court cannot say that no rational
 6 trier of fact could find that Detective Solano lacked probable
 7 cause to arrest Plaintiff because he knew the alleged facts
 8 justifying the arrest to be false.

9 **C. Plaintiff's Acquittal and Brady Violations**

10 Both Defendants and Plaintiff frame at least some of his
 11 Section 1983 claims as Brady-related, since Plaintiff alleges that
 12 Detective Solano: 1) failed to disclose his alleged romantic
 13 relationship with Gil and fabrication of evidence against
 14 Plaintiff; and 2) conspired with Deputy Verduzco to suppress
 15 evidence favorable to Plaintiff. See Brady v. Maryland, 373 U.S.
 16 83 (1963). Plaintiff contends that the disclosure of this evidence
 17 would have resulted in the criminal charges against him being
 18 "refused, rejected and/or dismissed." (SAC ¶¶ 24, 36-37.)
 19 Defendants, however, argue that there is no Section 1983 claim for
 20 failure to disclose evidence, absent a conviction in the underlying
 21 criminal action. The court disagrees.

22 This issue has not yet been definitively resolved in the Ninth
 23 Circuit. Although a split panel would have agreed with Defendants'
 24 position in a recent decision, that opinion was withdrawn and
 25 superseded. See Smith v. Almada, 623 F.3d 1078 (9th Cir. 2010),
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 27

28 ² The alleged corroboration by Gil's sister and another witness only appear in Detective Solano's own report.

1 withdrawn and superseded by 640 F.3d 931 (9th Cir. 2011).³ In its
 2 superseding opinion, the Almada court declined to reach the issue,
 3 but the judges separately voiced their opinions. In a special
 4 concurrence, District Judge Gwin, sitting by designation, explained
 5 in detail why he would "not allow § 1983 claims for alleged Brady
 6 violations by a defendant who is ultimately acquitted." 640 F.3d
 7 at 945. Judge Gould, in his own concurrence, indicated that he was
 8 personally inclined to agree with Judge Gwin, but had decided to
 9 leave the issue open at the urging of several colleagues on the
 10 court. Id. at 940-41. Finally, in dissent, Judge D.W. Nelson
 11 strongly disagreed on the Brady issue, arguing that a conviction is
 12 not a prerequisite to such a claim. See id. at 945-48.

13 The court finds Judge Nelson's reasoning persuasive. As Judge
 14 Nelson summarized following a thoughtful analysis: "On balance,
 15 the precedent in the Supreme Court and in our Circuit cuts against
 16 the idea that the right to the disclosure of exculpatory evidence
 17 is vitiated simply because a conviction does not result." Id. at
 18 947. As Judge Nelson also explained, to hold otherwise would
 19 ignore Brady's "two interdependent goals" of "protecting the right
 20 to a fair trial and discouraging misconduct on the part of police
 21 and prosecutors," by limiting the doctrine to "only the most
 22 egregious instances of evidentiary suppression--those that result
 23 in a conviction." Id. at 947-48. Thus, as she concluded: "The
 24 fact that a defendant is fortunate enough to escape conviction does
 25 not absolve the state of responsibility for the breach of its Brady

27 ³ Another panel has since considered the issue, in an
 28 unpublished and non-precedential memorandum disposition. See
Puccetti v. Spencer, No. 10-35895, 2011 WL 6292200 (9th Cir. Dec.
 16, 2011).

1 obligations. The individual's right to a fair trial, mandated by
 2 the due process clause of the Fifth Amendment, does not hinge on
 3 the outcome of criminal proceedings." *Id.* at 948.

4 Judge Nelson's reasoning is also bolstered by an amicus brief
 5 submitted in that case,⁴ which Plaintiff seems to have drawn from
 6 extensively. As the brief explains, the Brady doctrine itself is
 7 based on procedural due process. Accordingly, even if Brady did
 8 not directly apply when a defendant is acquitted, the government
 9 might still violate the underlying due process right by suppressing
 10 evidence. This determination would then be governed by the three
 11 factors set forth by the Supreme Court in Mathews v. Eldridge, 424
 12 U.S. 319, 334-35 (1976). Indeed, the Court's analysis in United
 13 States v. Ruiz, 536 U.S. 622 (2002), strongly supports this
 14 conclusion. In Ruiz, the Court addressed whether the Fifth and
 15 Sixth Amendments require the government to disclose potential
 16 impeachment evidence prior to a plea agreement. See id. at 625.
 17 The Court first noted that "due process considerations" were "the
 18 very considerations that led [it] to find trial-related rights to
 19 exculpatory and impeachment information in Brady" and its progeny.
 20 The Court then applied the Mathews factors to determine whether due
 21 process supported the right alleged there. See id. at 631-33.⁵

22 ⁴ See Unopposed Motion of Amici Curiae National Police
 23 Accountability Project and Human Rights Defense Center to File
 24 Brief in Support of Plaintiff-Appellant's Petition for Rehearing En Banc, 623 F.3d 1078 (9th Cir. 2010) (Nos. 09-55346, 09-55334, 09-55345), 2010 WL 5650094.

25 ⁵ A number of circuit cases also support this analysis and
 26 the possibility of Brady or Brady-type due process violations
 27 absent any criminal conviction. See, e.g., McCann v. Mangialardi,
 28 337 F.3d 782, 787-88 (7th Cir. 2003) (discussing Ruiz and finding
 it "highly likely that the Supreme Court would find a violation of
 the Due Process Clause" if prosecutors failed to disclose
 (continued...)

Finally, the Fourteenth Amendment itself simply provides that the state may not deprive a person of his or her liberty without due process of law. As the Supreme Court has recognized, significant liberty deprivations can occur prior to trial. See, e.g., Gerstein v. Pugh, 420 U.S. 103, 114 (1975) (noting that significant liberty restraints can accompany both pretrial confinement - as it "may imperil the suspect's job, interrupt his source of income, and impair his family relationships" - and even pretrial release, when "accompanied by burdensome conditions"); United States v. Marion, 404 U.S. 307, 320 (1971) ("Arrest is a public act that may seriously interfere with the defendant's liberty, whether he is free on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy, and create anxiety in him, his family and his friends."). Likewise, criminal trial proceedings often entail similar liberty deprivations, from loss of one's employment, good name, and life savings, to continued custody during trial. Here, in particular, Plaintiff alleges that he spent time in pretrial custody, then suffered the costs imposed by a full criminal trial threatening additional incarceration. When such a loss of liberty is caused by the government's suppression of exculpatory evidence, it may violate the Constitution. And the government cannot claim "no harm, no foul" because of the fortuitousness of defendant's ultimate acquittal.

26 ⁵(...continued)
27 exculpatory evidence of actual innocence prior to a guilty plea);
28 United States v. Barton, 995 F.2d 931, 935 (9th Cir. 1993) (holding
that "the due process principles announced in Brady and its
progeny" also apply to suppression hearings).

1 For all these reasons, the court finds that Plaintiff has a
2 potential Section 1983 claim for Brady or Brady-type violations of
3 his due process rights. In light of the evidence discussed above,
4 Defendants may have failed to disclose material impeachment and
5 exculpatory evidence, thereby prejudicing Plaintiff. The court
6 therefore denies Defendants' Motion as to Plaintiff's first two
7 causes of action. The court, however, declines to conduct the
8 constitutional analysis that may ultimately be required, prior to
9 further factual development. As discussed, there are genuine
10 issues as to what, if any, impeaching or exculpatory evidence
11 Defendants failed to disclose.

12 **D. Qualified Immunity**

13 In support of qualified immunity for Detective Solano and
14 Deputy Velasco, Defendants simply repeat that there was probable
15 cause to arrest Plaintiff, and that the Detective and Deputy did
16 not fabricate or conceal any evidence. As discussed, there are
17 genuine disputes as to these material facts. The court therefore
18 denies Defendants' Motion as to qualified immunity.

19 **IV. CONCLUSION**

20 For the foregoing reasons, the court grants Defendants' Motion
21 for Summary Judgment on Counts Three, Four, and Five of Plaintiff's
22 Second Amended Complaint, and denies the Motion on Counts One and
23 Two.

24 IT IS SO ORDERED.

25
26 Dated: January 17, 2012


DEAN D. PREGERSON
United States District Judge

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